

REMARKS

Claims 1 and 3-30 remain pending.

Applicants acknowledge, with appreciation, the telephonic interview conducted on October 22, 2008, between the undersigned and Examiner Omotosho. Also present on the call were Primary Examiner Laneau, Li-Chung Daniel Ho of assignee Accenture and Luke McCammon of Finnegan. In accordance with 37 C.F.R. § 1.133(b), the interview focused on the differences between the claimed invention and the prior art, and specifically the failure of Gupta or any other reference to teach a synchronization tool that was adapted to obtain and store data regarding authoring and generation functions as performed by the content development platform, and wherein said platform is adapted to record performance metrics during authoring of instructional materials and generation of electronic learning content. No agreement was reached during the interview.

Claims 1 and 3-30 were rejected under 36 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,099,320 to Papadopoulos (henceforth, "Papadopoulos"), in view of U.S. patent application publication No. 2005/0192954 to Gupta et al. (henceforth, "Gupta"), U.S. patent application publication No. 2002/0173999 to Griffor et al. (henceforth "Griffor"), U.S. patent application publication No. 2002/0064766 to Cozens et al. (henceforth, "Cozens"), and U.S. patent application publication No. 2007/0061183 to Seetharaman et al. (henceforth, "Seetharaman"). These rejections are the same as those previously made of record in the prior Office Action, and to which Applicant responded in its prior paper.

Independent claims 1 and 15 distinguish themselves from the prior art by reciting a resource synchronization tool adapted to record performance metrics, from, importantly, the authoring of content by authors through content delivery to end users. The Office Action acknowledges that Papadopoulos does not expressly teach an electronic delivery platform adapted to record performance metrics during delivery of instruction, as claims 1 and 15 recite. Papadopoulos also does not teach “content development platform is adapted to record performance metrics during authoring of instructional materials” (emphasis added) as is also recited in both claims 1 and 15.

Attempting to supply this teaching, the Office Action states that Gupta “teaches a delivery system capable of recording performance metrics” (Office Action par. 6)(emphasis added). While Gupta has very limited discussion of content development, the performance metrics collected focus entirely on the delivery of content. For example, in paragraph 6 of the Office action, reference is made to Gupta stating that “[v]arious performance metrics are recorded during *user* interaction.” (Gupta par 0018) (emphasis added). This user interaction necessarily relates to the delivery of content rather than the authoring of content. This is immediately clear when one considers that Gupta states that the “invention relates to delivering adaptive content to a user.” (Gupta Abstract). However, to further clarify that these metrics are recorded only during content delivery, Gupta gives examples of these performance metrics such as “number of attempts to answer a question, whether the question was answered correctly, and reaction time between being presented the question and when the question was answered.” (Gupta par. 0018).

While Gupta does have some limited discussion of content development, it is clear that it does not record performance metrics during the authoring of content. Gupta states that “[b]ased on objectives and performance metrics content is tailored and delivered.” (Gupta par. 0015). This tailoring, however, is merely the filtering of pre-existing content. Gupta exemplifies this when it discusses topics such as “retrieval may be the result of receiving identification information associated with the user,” “an interface may involve the filtering of the complete set of available topics to a subset of topics,” “questions are removed ... as a result of fine-tuning of difficulty,” or using a “filtering constraint such as a user’s language, a user’s nationality, characteristics associates with the user’s user computer” (Gupta pars. 0087, 0093, 0096, 0131).

The only discussion of actual development, which is essentially limited to “expand[ing] the question base and assign[ing] specific topics,” makes no mention of recording any performance metrics during this process. (Gupta par. 0186). Indeed, it states that it uses the “user interaction data from the delivery environment” to craft the new content. *Id.* (emphasis added). That Gupta is the only source relied upon by the Office for teaching these performance metrics, and yet it makes no mention of recording these metrics during authoring of content would seem to teach away from any implication that such a functionality is obvious.

Thus, even to the extent that the Office considers Gupta as suggesting recording performance metrics during delivery, it is clear that Gupta does not disclose the recording of performance metrics during authoring of instructional materials by course authors, let alone a system capable of recording performance metrics collected by a content delivery platform and a content development platform. As a result, the Office

has improperly relied on Gupta as the only basis on the record for teaching, suggesting, or otherwise rendering obvious the recording of performance metrics by a content delivery platform and a content development platform.

The Office also incorrectly relies on Griffor as rendering claims 11 and 17 obvious by Griffor's suggestion that one align metrics measuring the difference between the competencies required by the organization's strategic plans and the skill based resources available in its participants in light of goals of the organization. As has been stated, Applicant's claimed invention comprises performance metrics recorded by a content development platform and a content delivery platform. References to metrics generally do not disclose or otherwise suggest the recording of performance metrics during authoring of learning content and during delivery of instruction as is recited in the claims.

The Office has also incorrectly relied on Papadopoulos in determining that claims 10, 17, and 26 do not distinguish over the prior art. The Office incorrectly determines that Papadopoulos teaches the learning solution is able to be outsourced from a learner organization to a learning entity. Papadopoulos makes no mention of outsourcing. Nevertheless, without support, the Office attempts to equate its "school" to an outsourcing learner organization, the "administrators" to the learning services providing entity, and the "curriculum" to the learning services agreement. These analogies to the requirements in claims 10, 17, and 26 display an apparent misunderstanding of what a learning solution is. Element 100 of Figure 1 in Applicant's specification shows an embodiment of one type of learning solution. This solution contains content creation, content delivery, *and* content administration. As stated in Applicant's claim 10, it is from

the learning solution's content development platform, electronic delivery platform, and learning administration platform that performances metrics are collected to gauge whether the minimum service levels have been met. As such, it is inappropriate to equate the "school" in Papadopoulos to an outsourcing learner organization, when that "school" is providing some of the very services that the outsourcing learner organization is outsourcing.

In rejecting claims 10, 17, and 26, the Office was also mistaken in determining that Papadopoulos teaches a learning services agreement detailing minimum service levels that must be met by a learning services providing entity. It attempts to equate this agreement to the "curriculum" in Papadopoulos, but that referenced curriculum merely refers to a student's course list. (Papadopoulos Col. 8 lines 1-7). The Office Action also states that the minimum service levels in the agreement is "inherent" in the curriculum. This is a misunderstanding of the minimum service levels, as Applicant's claims recite that it is the performance metrics collected during content development, content delivery, and learning administration which will determine whether the minimum service levels have been met. Since, as the Office Action itself states, Papadopoulos does not teach recording performance metrics during delivery or authoring of content, it is incorrect to suggest that it teaches a learning services agreement with minimum service levels when it lacks the functionality to determine if said levels have been met.

The Office has also incorrectly relied on Seetharaman in rejecting claims 5, 12, 22, and 28. Because there is no common inventor between Seetharaman and its parent application, Seetharaman is not entitled to relate back to the date of the parent

application. Since the effective date of Seetharaman is September 28, 2006, it is not prior art.

In sum, none of the prior art references of record describe a synchronization tool for collecting performance metrics that measure aspects of authoring, generation, and delivery, and then using such metrics for the preparation of cost allocation reports that reflect all aspects of an end-to-end learning solution as recited in Applicant's claims. The limited performance metrics disclosed in Gupta do not provide a basis for concluding that one of ordinary skill in the art would find obvious the recited collection of performance metrics at the many stages in the life of development, delivery, and administration of a learning solution, nor their integrated use.

All claims are thus allowable for the failure of the art to disclose, teach, suggest, or otherwise render obvious the recited combination of features. Favorable reconsideration of the claims is requested, including issuance of a timely Notice of Allowance.

Conclusion

No additional fees are believed to be due at this time. If, however, there are any fees due in connection with the filing of this Reply, please charge any necessary fees to Deposit Account No. 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

Dated: November 20, 2008

By: Charles E. Van Horn
Charles E. Van Horn
Reg. No. 40,266
(202) 408-4000